

INFORMATION BULLETIN #12

SALES TAX

DECEMBER, 2002

(Replaces Information Bulletin #12 dated August 1991)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information, which is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Public Transportation

REFERENCES: IC 6-2.5-5-27, 45 IAC 2.2-5-61, 45 IAC 2.2-5-62,
45 IAC 2.2-5-63

I. Public Transportation Definition

“Public transportation” means the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the appropriate federal or state regulatory authority.

Even if a person or company operates under the appropriate authority, they also must transport people or property for consideration. That is to say a public transportation provider must be compensated for transporting people or goods. The goods transported must be goods owned by someone other than the public transportation provider. To qualify for the exemption, a taxpayer must be predominately engaged in public transportation. A taxpayer is predominately

engaged in public transportation if greater than 50% of its gross income is derived from transporting people or property for hire.

II. Acquisition of a Public Transportation Provider

Tangible personal property bought by a public transportation provider can be bought exempt from sales or use tax if the property is to be directly used in providing public transportation. Property is directly used in providing public transportation if the property is reasonably necessary to provide public transportation.

Determining whether property is reasonably necessary to provide public transportation can be difficult. The Department has determined that the following list of items are reasonably necessary to provide public transportation. The items listed are not all the items that could be considered reasonably necessary and the purpose of the list is to give some basic examples.

1. Roadway machinery and equipment;
2. Caboose and locomotive supplies such as fuses, lanterns, batteries, and flags;
3. Tariff publications;
4. Vehicles used for public transportation;
5. Communication equipment;
6. Equipment and items purchased to meet federal requirements;
7. All replacement parts, repair parts, and materials consumed by exempt equipment;
8. Tools and equipment used to repair and maintain rolling stock and track;
9. Vehicles used primarily for transportation of track maintenance crews;
10. Items used for repairs and maintenance of such vehicles;
11. Items used for production of financial matters, insurance, schedules, routes, and rates;
12. Items used to provide customer stations, handle baggage, sell tickets;
13. Items used to keep vehicles clean and safe for the passengers;
14. Machine shop and truck tools;
15. Equipment related to the construction and operation of terminals;
16. Directories;
17. Gas storage facilities;
18. Caboose and locomotive compliments such as towels, masking tape, powders, cleaners, ice, water coolers, and bottled water;
19. Cleaning supplies;
20. Employee uniforms; and
21. Garage supplies.

There are certain functional categories of items that are not reasonably necessary to provide public transportation. For example, all items related to the marketing and selling of public transportation are taxable. Telephone utilities

used for sales activities, office supplies and furniture for sales personnel, and promotional expenses, such as matches, caps or jackets given away to the public, also would be subject to tax. If a taxpayer predominately engaged in public transportation acquires tangible personal property for predominate use in providing public transportation, it is entitled to the exemption. Thus, a phone used ten percent of the time for sales calls and ninety percent of the time to dispatch vehicles, would meet the predominate use (greater than 50%) test, and the entire purchase price would be exempt.

III. Exemption Certificates

A. Public Transportation

Any person or company predominately engaged in providing public transportation may buy certain items exempt from sales or use tax (see Section II), but to buy exempt, the public transportation provider should register with the Indiana Department of Revenue to obtain a Registered Retail Merchant Certificate, "RRMC". The RRMC will have a number that must be used on all exemption certificates given to vendors by the public transportation provider. Exemption certificates may be used either as a blanket exemption, kept on file by the vendor, or for each individual transaction. A blanket exemption certificate tells the vendor that all purchases made by the public transportation provider are reasonably necessary to providing public transportation. If a public transportation provider uses property purchased with a blanket exemption in a taxable manner, the provider must pay use tax for the purchase. The tax must be remitted on either the provider's sales and use tax return, the annual income tax return or a consumer use tax return, Form ST-115.

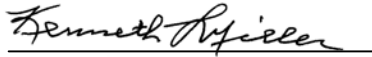
B. Individuals

Individuals predominately engaged in public transportation but operating under another person's IN USDOT or IN ID# or similar permit must use a special exemption certificate, Form ST-135, when making an exempt purchase. This special exemption certificate eliminates the need for individuals to register with the Department as retail merchants.

IV. Utilities

Before a person or company predominately engaged in providing public transportation can purchase utilities, natural gas, electricity, local exchange telephone service, intrastate toll message telephone service, steam or water, exempt from tax, an exemption certificate issued by the Department on behalf of the transportation provider, must be on file with the utility. A public transportation provider will only qualify for the special exemption certificate, Form ST-109, after

having an ST-200 utility exemption application approved by the Department. The Department will only issue an ST-109 to a utility on behalf of the provider if the utility being bought is used exclusively for an exempt purpose. If the utility is being used less than fifty percent (50%), in providing public transportation, the public transportation provider must pay the tax and file a claim for refund for the exempt percentage.

A handwritten signature in cursive script, reading "Kenneth L. Miller", written in black ink.

Kenneth L. Miller
Commissioner